IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

CIVIL REVISION APPLICATION NO. 251 OF 2002

1. Shri Conceicao Fernandes,
   son of late Joao Jose
   Fernandes, major in age,
   married, landlord, and
   his wife.

2. Smt. Joquinha Fernandes,
   major in age, housewife,

   both residents of House No. 572,
   Combiabhat, velim,
   Salcete-Goa.

3. Piedade Fernandes, son of
   late Joao Jose Fernandes,
   major in age, landlord,
   married and his wife,

4. Smt. Joana Fernandes,
   major in age, housewife,

   both residents of House No. 701,
   Nagdodi, Ambelim, Velim,
   Salcete-Goa. .... Petitioners

Versus

1. Asst. Engineer, Sub-Division IV,
   Electricity Department, Vidyut
   Bhavan, Aquem, Margao-Goa.

2. State of Goa, through its
   Chief Secretary, Secretariat,
   Panaji-Goa. .... Respondents

Shri A.F. Diniz, Advocate for Petitioners.

Shri S. Vahidulla, Additional Government Advocate for Respondents.

CORAM: **P.V. KAKADE, J**.

DATE: **10th October, 2006**

ORAL JUDGMENT :

The aggrieved applicants have preferred this revision application against the order passed by the District Judge, South Goa, Margao dated 27/09/2002, dismissing their application for compensation and also for enhanced compensation under Section 10(d) of the Indian Telegraph Act, 1885 read with Section 16(3) of the said Act.

2. Heard both the sides. Perused the record.

3. The applicants had initially filed a civil suit against the respondents before the Court of Civil Judge, Senior Division at Margao and apparently obtained an order in their favour, but in appeal, filed before District Court which was allowed, respondents were allowed to install the said electricity line in the impugned land. The applicants, thereafter,

preferred a revision petition before this Court which was disposed of by order dated 11/10/2001 and it was an order passed by consent, formulating the conditions to be abided with by the parties as follows:

(i) The respondents should deposit an amount of Rs. 3,00,000/- towards the amount of compensation payable to the applicants for damages to the trees, non-user of the land and other matters, by 30/10/2001.

(ii) The respondents should fix the amount of compensation payable to the applicants with respect to the loss of use of land and damages to the trees, etc., within a period of three weeks from the date of marking of the trees, which are required to be cut for laying down the line.

(iii) If the amount of compensation so fixed by the respondents was Rs. 3 lakhs or less than that, then the applicants should be entitled to withdraw the said amount deposited in the District Court.

(iv) If the amount of compensation was more than Rs. 3 lakhs, then the respondents should deposit additional amount in this Court and the applicants would be entitled to withdraw that additional amount also.

(v) In case the applicants were not satisfied with the amount of compensation so fixed by the respondents, then they should proceed, if so advised, for additional compensation, but even then the applicants would be entitled to withdraw the amount deposited in the Court to the extent of the amount of compensation fixed by the respondents.

(vi)In case the amount of compensation fixed was less than Rs. 3 lakhs and the applicants did not dispute that amount of compensation, then the balance which would remain could be withdrawn by the respondents.

(vii)In case any proceedings are filed for additional compensation by the applicants, then the District Judge should dispose of such proceedings as early as possible and preferably within a period of six months.

(viii)In case the respondents decided to change the alignment of the laying of the electricity line, they would be entitled to do so, but the same procedure with respect to fixing and paying of compensation would be followed mutatis mutandis.

(ix)The respondents were required to see whether it was feasible to shift the alignment of laying the electricity line along the border of the land of the applicants.

(x)The respondents were free to carry out the work of laying the electricity line as per the original alignment in view of the above directions.

As a result of the said settlement before this Court, the respondents carried out a valuation, and a list of trees to be cut was prepared and the trees were valued at Rs. 11,080/-. However, as far as the loss of use of land was concerned, on behalf of the respondents, it was opined that as the land fell below overhead line, it could be utilised by the owners of the land and,

therefore, compensation for non-user was not considered.

4. The learned District Judge, while disposing of the application raised the issue to the fact whether the applicants were entitled to further compensation of Rs. 29,37,000/- by way of loss of the use of land. The District Court finally after hearing both the parties came to the conclusion that they were not entitled to such compensation for loss of the land and dismissed the application. While doing so, the District Court observed that Rule 82 of the Indian Electricity Rules, 1956, provides for erection or alteration to buildings, structures, flood banks and elevation of roads. Sub-rule (1) of Rule 82 provides that if at any time subsequent to the erection of an overhead line (whether covered with insulating material or bare), any person proposes to erect a new building or structure or flood bank or to raise any road level or to carry out any other type of work whether permanent or temporary or to make in or upon any building or structure or flood bank or road, any permanent or temporary addition or alteration, he and the contractor whom he employs to carry out the erection, addition or alteration, shall, if such work, building, structure, flood bank, road or additions and alterations thereto would, during or after the construction result in contravention of any of the provision of Rules 77, 79 and 80 give

notice in writing of his intention to the supplier and to the Inspector and shall furnish therewith a scale drawing showing the proposed building, structure, flood bank, road and addition or alteration and scaffolding required construction. The learned District Judge has also discussed other relevant provisions of the Electricity Act. While referring to Rule 80 of the said Indian Electricity Rules, 1956 it is observed that it provides for clearance to be maintained from buildings of high and extra-high voltage line and sub-rule (1) of Rule 80 provides that when a high or extra-high voltage overhead line passes above or adjacent to any building or part of a building it shall have on the basis of maximum sag a vertical clearance above the highest part of the building immediately under such lines of not less than 3.58 metres, in case of high voltage line up to and including 33,000 volts. Sub-rule (2) of Rule 80 provides that the horizontal clearance between the nearest conductor and any part of such building shall, on the basis of maximum deflection due to wind, be not less than 1.829 metres, in case of high voltage line about 11,000 volts up to and including 33,000 volts. According to the learned District Judge, applicants did not lead evidence to show what was the height of the overhead line erected by the respondents. Therefore, it was concluded that the applicants, in case they wish to carry out any construction of any building, the applicants would be

required to keep a horizontal clearance of 1.829 metres and considering that there would be three conductors for the said overhead line. The applicants may be deprived from use for construction purpose a strip of about 15 feet or about 4.66 metres, i.e. an area of about 4147.40 sq. metres only. It was further observed that in the event of the applicants developing their land in the near or distant future, the applicants could ask for the shifting of the line, as contemplated by Rule 82 of the Indian Electricity Rules, 1956 or leave the area of about 4147.40 sq. metres for the open space which might be required to be left out from construction. On this basis, finally the application came to be dismissed.

5. When matter came up for hearing, in the course of hearing of the matter it was seen apparent that the land over which the high tension wires passed, could not be put to any use. At that stage, the learned Government pleader also agreed to put up proposal to the State Government to consider the quantum of compensation to be paid to the petitioners.

6. Thereafter, ultimately, the so called proposal has come up for consideration which is filed in writing on record, wherein it is observed that

the land below the high tension line could be put to use either for growing trees on for any other suitable plantation by asking for necessary clearance and only about 2.8 metres of area for clearance has to be kept between the conductor of 33 KV line as such the petitioners can not be entitled for compensation as no loss is being caused to the petitioners. It is further observed on behalf of the State that any development if permissible under the Social forest land is desired to be obtained by the petitioner, the petitioners case shall be considered in terms of law as and when petitioner approaches the concerned authorities.

7. In my considered view, the proposal in other words is on negative lines.

8. In this connection, the learned Counsel for the applicants brought to my notice the ruling in the case of ***K.S.E.B.*** **Versus** ***Cheriyan Varghese*** **(AIR 1989 Kerala 198),** wherein it was observed that the Court was of the view that apart from the compensation for damage done by the cutting of trees, the owner of the land was also entitled to compensation for any diminution in value of land that he has suffered for the reason of the drawal of overhead power lines across the land. The diminution in value is

to be determined with reference to the market value of land without trees before and after the drawal of the lines.

9. In my view, this is the principle which has been overlooked by the learned District Judge and for which purpose, I am inclined to remand the matter to adjudicate the issue afresh. On the basis of this observation, I hereby direct that the order passed by the District Judge, South Goa, Margao dated 27/09/2002 is hereby set aside. Matter is remanded to the District Judge, South Goa, Margao for consideration afresh on the basis of observations made herein.

10. With these directions, the revision application stands disposed of with no order as to costs. Both the parties shall be entitled to put up evidence in support of their respective cases.

P.V. KAKADE, J.

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